IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.699 OF 1999
IN
WRIT PETITION NO.454 OF 1999

Dr.Vishnu Acharya .. Appellant.

V/s.

State of Maharashtra (Through the Secretary to the Government of Maharashtra, Department of Co-operation, Mantralaya, Mumbai - 400 032) & Others .. Respondents.

Mr.M.R. Phal for the appellant.

Mr.Pradeep Jadhav, AGP for respondent Nos.1 and 2.

Mr.C.D. Deogirikar for respondent No.3

CORAM : R.M. LODHA, &
J.P. DEVADHAR, JJ.

DATED : 31ST AUGUST, 2004.

P.C. :

Heard.

2. The learned counsel for the parties agreed that merits of diverse contentions raised in the writ petition may not be examined by us in appeal and the order dated March 9, 1999 passed by the learned Single Judge and the order dated December 17, 1998 passed by the Secretary (Co-operation), Government of Maharashtra, Mantralaya, Bombay be set aside and the

appeal filed by present respondent No.3 under Section 152 of the Maharashtra Co-operative Societies Act, 1960 (for short 'Act of 1960') be restored to the file of the Secretary (Co-operation) for fresh decision in accordance with law. The learned counsel for the parties also agreed that in the appeal under Section 152, the question of exemption under Section 7 of the Act of 1960 could not arise. However, the State Government may independently consider the aspect of exemption under Section 7 in accordance with law.

3. The submissions of the learned counsel for the parties are fair and reasonable. We, accordingly, dispose of the appeal by following order :

i) The order dated March 9, 1999 passed by the learned Single Judge is quashed and set aside.

ii) The order dated December 17, 1998 passed by the Secretary (Co-operation), Government of Maharashtra, Mantralaya, Bombay is also quashed and set aside.

iii) The appeal preferred by present respondent No.3 and others under Section 152 of the Act of 1960 against the order dated July 2, 1996 passed by the Divisional Joint Registrar (Admn.), Co-operative Societies, Mumbai Division, Mumbai is restored to file of the Secretary (Co-operation), Government of Maharashtra, Bombay for fresh consideration in accordance with law.

iv) The parties are directed to appear before the Secretary (Co-operation), Government of Maharashtra, Mantralaya, Bombay on October 4, 2004.

v) All contentions of the parties are kept open to be agitated in the appeal before the Secretary (Co-operation), Government of Maharashtra, Mantralaya, Bombay.

vi) It is clarified that while hearing and deciding the appeal under Section 152 of the Act of 1960, the Secretary (Co-operation), Government of Maharashtra,

Mantralaya, Bombay shall not touch the aspect of exemption under Section 7 of the Act of 1960. However, this will not preclude the State Government to independently exercise the power under Section 7 of the Act of 1960 in accordance with law if the facts and circumstances so warrant.

vii) No costs.

4. Certified copy expedited.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)